

BLC.14654

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JOSE FUENTES
Plaintiff

V.

FIESTA MART, L.L.C., a corporation
d/b/a Fiesta, and BODEGA LATINA
CORPORATION, a corporation d/b/a
EL SUPER
Defendants

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CIVIL ACTION NO. _____

NOTICE OF REMOVAL

TO: THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1441 and 1332, Defendants Fiesta Mart, LLC and BODEGA LATINA CORPORATION, by and through their undersigned attorneys, give notice of removal of the above-captioned action from the 134th Judicial District Court, Dallas County, Texas, to the United States District Court for the Northern District of Texas, Dallas Division. In support of this Notice of Removal (this “Notice”), Defendants further state that:

I. INTRODUCTION

1. On or about September 13, 2021, Plaintiff JOSE FUENTES commenced the above-captioned action against Fiesta Mart, LLC and Bodega Latina Corporation through his filing of Plaintiff’s Original Petition (the “Petition”) in the 134th Judicial District Court, Dallas County, Texas, captioned as *Jose Fuentes v. Fiesta Mart, LLC, a corporation d/b/a Fiesta, and Bodega Latina Corporation, a corporation d/b/a El Super*, Cause No. DC-21-13279. On or about

December 8, 2021, Fiesta Mart, LLC, was served with Citation and a copy of the Petition. On or about December 9, 2021, Bodega Latina Corporation was served with Citation and a copy of the Petition. This lawsuit is a civil action within the meaning of the Acts of Congress, relating to the removal of civil actions. See 28 U.S.C. §§ 1441, 1446. This Notice is filed timely, pursuant to 28 U.S.C. § 1446(b), because it is filed within thirty (30) days of December 8 & 9, 2021, the dates on which Defendants were served with a copy of the Petition. No previous notice of removal has been filed or made with this Court for the relief sought herein.

II. BASIS FOR REMOVAL

4. Removal is proper under 28 U.S.C. § 1441. It is a civil action brought in state court and the District Courts of the United States have original jurisdiction over this action under 28 U.S.C. § 1332, since the plaintiff and the defendants are diverse in citizenship. This action is removable to this Court pursuant to the provisions of 28 U.S.C. §1441(b) because Plaintiff is a citizen of the State of Texas. Although Defendant Fiesta Mart, LLC, is a limited liability company organized under the laws of Texas, its sole member is Bodega Latina Corp., a Delaware corporation with its principal place of business, or its “nerve center” in California. Defendant Fiesta Mart, LLC’s citizenship as an LLC is determined by the citizenship of its members.¹ A corporation, such as Bodega Latina Corp., is deemed to be a “citizen” of the state where it maintains its principal place of business (its “nerve center”) and the state of its incorporation.² Therefore, Defendant Fiesta Mart, LLC is a citizen of the states of Delaware and California, the principal place of business and the state of incorporation of Fiesta Mart, LLC’s sole member, Bodega Latina Corp. Accordingly, Plaintiff is diverse from both Defendants Fiesta Mart LLC and Bodega Latina Corp.

¹ See e.g., *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008).

² See §1332(c)(1); see also, *Hertz Corp. v. Friend*, 559 U.S. 77, 130 S.Ct. 1181, 1185-86 (2010).

5. The amount in controversy in this action, exclusive of interest and costs, exceeds the Court's minimum jurisdictional requirements and pleads damages pursuant to Tex. R. Civ. P. 47(c)(3). Plaintiff seeks monetary relief over \$1,000,000.00. *See* Plaintiff's Original Petition, paragraph I.³

6. The United States District Court for the Northern District of Texas, Dallas division, embraces Dallas County, the place where the state court action was filed, and is pending in the 134th Judicial District Court of Dallas County, Texas. This statement is not meant as a waiver of any argument that venue is improper in the location in which the state court action was filed, but merely demonstrates the propriety of removing the action to this federal judicial district.

7. All pleadings, process, orders, served upon Defendants in the state court action are attached to this Notice as Exhibit "A" as required by 28 U.S.C. § 1446(a). No other motions are pending before the state court.

8. Defendants will promptly file a copy of this Notice with the clerk of the state court in which the action is pending.

III. REQUEST FOR JURY TRIAL

9. Defendants hereby demand a trial by jury in accordance with the provisions of FED. R. CIV. P. 38.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that this action be immediately and entirely removed upon filing of this Notice of Removal to the United States District Court for the Northern District of Texas, Dallas Division, and for such other and further relief to which they may show themselves to be justly entitled in equity or law.

Dated: January 3, 2022.

³ *See* Plaintiff's Original Petition attached.

Respectfully Submitted,

/s/ Jeff C. Wright

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that on this the 3RD day of January, 2022, a true and correct copy of the foregoing Notice of Removal was filed electronically and served on counsel of record:

Rhiannon Kelso
Kelso Law PLLC
12222 Merit Drive, Ste. 1200
Dallas, TX 75251

/s/ Jeff C. Wright

JEFF C. WRIGHT